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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,686	08/24/2000	Gerald Quapil	31833-150836 (RK)	2565

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EXAMINER

PADMANABHAN, KARTIC

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/643,686

Applicant(s)

QUAPIL ET AL.

Examiner

Kartic Padmanabhan

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 15 December 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: -.

Claim(s) objected to: -.

Claim(s) rejected: 2-19,22,23 and 27.

Claim(s) withdrawn from consideration: 24-26.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


LONG V. LE
SUPERVISORY PATENT EXAMINER
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12/26/04

Continuation of 2. NOTE: applicant's proposed amendment amends the claims to recite the analysis of sandwich immunoassays, which has not previously been considered. .

Continuation of 5. does NOT place the application in condition for allowance because: of reasons set forth in the previous office action. Applicant's arguments with respect to the proposed amendment are moot, as the amendment has not been considered or entered. Applicant's arguments that the Lekkala reference teaches a different assay format than that claimed is moot, as the claims are drawn to a device, not a method. Applicant generally concludes that the different assay protocol "necessitates different positioning of the elements," but has not stated the way in which the elements of the claimed device differ from that of Lekkala. This argument amounts to a general conclusion without any basis, which is prima facie unconvincing. Applicant further argues that the Babson reference does not teach the same assay as claimed or as in Lekkala. However, the reference was only relied upon for teaching a common receiver, and as applicant acknowledges, both Babson and Lekkala are in the field of automated immunoassay analyzers. Applicant also argues that sufficient motivation has not been provided for the combination of Babson with Lekkala, which is not convincing. Applicant is directed to the rejection under 35 USC 103 in the Final Rejection mailed on 6/15/04, which rejection provides sufficient motivation to make the combination.